

CC TO JUDGE 21

Honorable Thomas S. Zilly  
Noted for Hearing September 24, 2003  
No Oral Argument Requested

02-CV-01683-M

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VALVE CORPORATION, A Washington  
corporation,

Plaintiff,

v.

SIERRA ENTERTAINMENT, INC. (AKA  
SIERRA ON-LINE, INC.), a Delaware  
corporation,

Defendant.

Civil Action No. CV02-1683

PLAINTIFF'S MOTION FOR LEAVE  
TO FILE FIRST AMENDED  
COMPLAINT

**I. SUMMARY AND RELIEF REQUESTED**

Plaintiff Valve, LLC ("Valve") hereby moves for leave to amend its complaint in order to (1) join Vivendi Universal Games, Inc. and Vivendi Universal, S.A. as defendants; (2) add an additional cause of action for breach of contract against all defendants; and (3) to substitute Valve Corporation for Valve, L.L.C. to reflect a recent change in Valve's business entity. There is good cause for such amendment to the complaint and neither Sierra nor the new defendants will be prejudiced. A copy

MOTION TO FILE FIRST  
AMENDED COMPLAINT - 1

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1 of Valve's proposed First Amended Complaint for Copyright Infringement and Breach of Contract is  
2 attached as Exhibit A.

## 3 II. STATEMENT OF FACTS

4 This case involves a dispute between Valve, a developer of high-end, computer video games  
5 such as Counter-Strike and Half-Life (the "Valve Games"), and its publisher, Sierra Entertainment,  
6 Inc. ("Sierra"), relating to the manufacture and distribution of the Valve Games. A Software  
7 Publishing Agreement dated March 21, 2001 (the "Agreement") was entered into by Sierra on behalf  
8 of Sierra and its "Affiliates," a term defined in the Agreement. Vivendi Universal Games and  
9 Vivendi Universal (collectively, "Vivendi Companies") are "Affiliates" under the Agreement and  
10 thereby bound by its restrictions and obligations.

11 The Agreement grants Sierra the right to reproduce, market and distribute the Valve Games.  
12 The distribution rights granted are limited to "Retail Packaged Product" versions of Valve games  
13 distributed to end users in the retail channel. Valve did not grant Sierra any rights to distribute the  
14 Valve Games for commercial use in multi-player settings or "cyber cafés." That right and all others  
15 not transferred are reserved to Valve, and Valve has its own program for licensing the Valve Games  
16 to cyber cafés.

17 Valve has ascertained, through discovery and its own investigation, that Sierra has used the  
18 Vivendi Companies to distribute the Valve games to cyber cafés. See Holtman Declaration in  
19 Support of Motion to Amend Complaint ("Holtman Decl.") ¶ 1, Exhibit A. This activity is at the  
20 heart of Valve's initial complaint. Additionally, it appears that revenue from these activities may  
21 have accrued to the Vivendi Companies. Id. Valve has requested that Sierra stipulate to adding such  
22 parties to the lawsuit. See Holtman Decl. ¶ 2, Exhibit A. This request has gone unanswered by  
23 Sierra.

24 As this lawsuit has developed, Valve has also become aware of facts that support additional  
25 claims against the Vivendi Companies:  
26

- 1 • Vivendi Universal Games, Inc. entered into two agreements with a Philippine  
2 corporation known as Asian Media Development Group ("AMDG")  
3 purporting to authorize AMDG to distribute and license Valve games and  
4 other Vivendi-distributed games to cyber cafés in the Philippines. See  
5 Holtman Decl. ¶ 3. Although the purpose and effect of the two agreements  
6 was to provide AMDG with products that it could license to cyber cafés for  
7 Vivendi, the International Distributor Agreement for CounterStrike was  
8 crafted to avoid the appearance that Vivendi had done so.  
9
- 10 • Valve discovered that, without Valve's authority or approval, the Vivendi  
11 Companies created and entered into various end-user license agreements  
12 ("EULAs") with cyber cafés in order to permit Valve Games to be played at  
13 cyber cafés. Such activity is in violation of the Agreement because Valve  
14 must approve all EULA's distributed with Valve Games. See Holtman Decl.  
15 ¶ 4.
- 16 • Valve discovered that the Vivendi Companies have entered into at least one  
17 contract for Valve Games to be installed by an original equipment  
18 manufacturer (OEM), which is a breach of the Agreement. See Holtman  
19 Decl. ¶ 5.
- 20 • Although requested to do so by Valve, Sierra and the Vivendi Companies  
21 have refused to cooperate with Valve in enforcing Valve's rights as required  
22 by the Agreement. See Holtman Decl. ¶ 6.

23 Consequently, Valve seeks leave to amend its complaint to add parties and a breach of contract  
24 claim so that it can completely recover for the damage it suffered as a result of the actions of Sierra  
25 and its related entities.

## 26 V. ARGUMENT

### A. The Vivendi Companies Should Be Joined as Additional Parties.

The complaint should be amended to include additional defendants as allowed by FED. R.  
Civ. P. 19 because Sierra's affiliate corporations are necessary parties to the action.

The Vivendi Companies both agreed to jurisdiction in Washington federal district court  
under the Agreement. The Agreement provides that its terms bind Sierra and its Affiliates.  
"Affiliates" are defined as "any entity that, directly or indirectly, or through one or more  
intermediaries, owns, is owned by, or is under common ownership with, such specific entity." See

1 Agreement § 1. The Vivendi Companies are Affiliates under this definition. The Agreement also  
2 provides that the parties agree to jurisdiction and venue in federal district court in the Western  
3 District of Washington. Agreement § 9.10.

4 In addition, without amendment Valve may not be able to obtain complete relief. Where a  
5 related corporate entity enters into contracts that are at the core of a controversy, it is a necessary  
6 party. Rojas v. Loewen Group Int., Inc., 178 F.R.D. 356, 361 (D.P.R. 1998). Here, the Vivendi  
7 Companies apparently entered into contracts (license agreements with cyber cafés) that are the core  
8 of the present dispute. As such, they are necessary parties and should be joined. See, e.g., Acton  
9 Co. v. Bachman Foods, Inc., 668 F.2d 76, 78 (1st Cir. 1982) (parent that played "substantial role"  
10 was indispensable party to action against subsidiary); Cinema North Corp. v. Plaza at Latham  
11 Associates, 867 F.2d 135, 139 (2nd Cir. 1989) (where company acted as agent for affiliate company,  
12 it was a real party in interest in the suit); Hanna Mining Co. v. Minnesota Power and Light Co., 573  
13 F.Supp. 1395, 1399 (D.Minn. 1983) (parents and subsidiary were indispensable parties where both  
14 had identical interests in subject of action). As the Vivendi Companies were closely involved in the  
15 implementation of the Agreement, and specifically were involved in the manufacturing, distribution,  
16 and licensing of Valve Games to cyber cafés domestically and abroad, they are necessary parties to  
17 the litigation. Freeman v. Northwest Acceptance Corp., 754 F.2d 553, 559 (5th Cir. 1985) (holding  
18 that where a company is an active participant in the events giving rise to the claim, joinder under  
19 Rule 19 is necessary). These activities underlie both Valve's claim of copyright infringement as  
20 well as its additional claims it now seeks to bring, and these parties are consequently necessary  
21 parties under Rule 19.

22 Neither Sierra nor the Vivendi Companies will be prejudiced by this amendment to join  
23 parties, and so amendment is appropriate under Rule 19. See DCD Programs, Ltd. v. Leighton, 833  
24 F.2d 183, 187 (9th Cir. 1987). Sierra has already produced some documents that reflect the actions  
25 of each of the proposed additional defendants. Consequently, none of the parties Valve proposes to  
26

1 join to this litigation will be surprised or unable to respond to the claims.

2 **B. Valve Should Be Permitted to Bring Additional Claims Against the Vivendi Companies.**

3 Valve seeks to amend to include alternative and additional claims for breach of contract.  
4 FED. R. CIV. P. 15 states in relevant part that “. . . a party may amend his pleading only by leave of  
5 court or by written consent of the adverse party; and leave shall be freely given when justice so  
6 requires.” See Foman v. Davis, 371 U.S. 178, 181-82 (1962) (the spirit of the rules requires  
7 decisions on the merits rather than on the basis of technicalities). Indeed, “[a]mendments should be  
8 freely granted unless the opposing party would be prejudiced. DCD Programs, 833 F.2d at 186.  
9 (stating that “rule 15’s policy of favoring amendments to pleadings should be allowed with ‘extreme  
10 liberality’” and found abuse of discretion to deny leave to file fourth amended complaint), quoting,  
11 U.S. v. Webb, 655 F.2d 977, 979 (9th Cir. 1981). Valve should be allowed to amend its complaint  
12 under FED. R. CIV. P. 15.

13 “Several factors are usually used as criteria to determine the propriety of a motion for leave  
14 to amend. These criteria include undue delay, bad faith, futility of amendment, and prejudice to the  
15 opposing party. While all these factors are relevant, the crucial factor is the resulting prejudice to  
16 the opposing party.” Howey v. United States, 481 F.2d 1187, 1190 (9th Cir. 1973). Sierra is not  
17 prejudiced by this amendment, as discovery is in its initial stages. Indeed, in Howey, the court found  
18 there had been no showing of undue prejudice of bad faith and granted a motion to amend on the  
19 second day of trial. 481 F.2d at 1192. Valve initially brought a claim for copyright infringement in  
20 order to minimize the scope of the parties’ dispute. However, as the scope of the dispute has  
21 broadened, Valve should be permitted to amend its complaint accordingly.

22 Neither Sierra nor the Vivendi Companies will be prejudiced if Valve is allowed to amend its  
23 complaint to add claims. Discovery is in initial stages and neither Sierra nor the other potential  
24 codefendants will be surprised by the additional claims. Courts do not find prejudice when the  
25 opposing party had sufficient notice of the action. Spano v. Safeco Ins. Co. of Am., 215 F.R.D. 601,  
26

609 (D.Ore. 2003). In Hageman, the court stated that because the defendant was aware of the fact situation upon which the amended complaint was based and that the additional claims arose out of the same circumstances, there was no showing of prejudice. 486 F.2d at 484. The Vivendi Companies are fully aware of the fact situation surrounding the initial complaint, and the additional claims arise out of these and related facts. To the extent the Vivendi Companies argue that they face a “new” claim not brought in the initial complaint and hence suffer prejudice, such an argument is meritless. S. Silberblatt, Inc. v. East Harlem Pilot Block, 608 F.2d 28, 43 (2nd Cir. 1979) (Such a burden “hardly amounts to prejudice outweighing the policy of Rule 15(a) in favor of permitting the parties to obtain an adjudication of the merits.”); see also, DCD Programs, 833 F.2d at 187 (holding that the party opposing amendment bears the burden of proving prejudice).

Granting leave to allow Valve to bring additional claims is appropriate, as justice requires the addition and the Vivendi Companies will not be prejudiced by the amendment.

**C. Valve Corporation Is the Real Party in Interest.**

In July 2003, Valve L.L.C. was reorganized as Valve Corporation. The reorganization was recognized by Sierra. This qualifies as a transfer of interest under Fed. R. Civ. P. 25(c) and Valve Corporation should be named the real party in interest. Valve has done so in its amended complaint.

**VI. CONCLUSION**

All factors support granting leave to amend Valve’s complaint to add the additional claims, join parties, and name Valve Corporation as the real party in interest. The case is in its initial stages. There is absolutely no prejudice caused to any defendant by the proposed amendments, and amendment is necessary for Valve to obtain a full adjudication of its rights. For the reasons stated above, plaintiff respectfully requests that this Court enter an order granting it leave to amend its complaint as set forth herein.

1 DATED this 15th day of September, 2003.

2 PRESTON GATES & ELLIS LLP

3  
4 By 

Karl J. Quackenbush, WSBA #9602

5 Jason P. Holtman, WSBA #28233

6 Attorneys for Plaintiff

Valve Corporation

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AMENDED COMPLAINT - 7

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VALVE CORPORATION, a Washington  
corporation,

Plaintiff,

v.

SIERRA ENTERTAINMENT, INC. (AKA  
SIERRA ON-LINE, INC.), a Delaware  
corporation; VIVENDI UNIVERSAL  
GAMES, INC., a Delaware corporation; and  
VIVENDI UNIVERSAL, S.A., a French  
foreign corporation

Defendants.

Civil Action No. CV02-1683

FIRST AMENDED COMPLAINT FOR  
COPYRIGHT INFRINGEMENT AND  
BREACH OF CONTRACT

**Jury Trial Demanded**

Plaintiff Valve Corporation ("Valve") hereby alleges as follows:

**I. JURISDICTION AND VENUE**

1. This is an action for copyright infringement under the Copyright Act, 17 U.S.C. § 501 *et. seq.*, and an action for breach of contract under Washington law.

2. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1332,

1 and 1338. This court has personal jurisdiction over Defendants Sierra Entertainment, Inc., Vivendi  
2 Universal Games and Vivendi Universal because they conduct business in this judicial district and  
3 consented to the jurisdiction of this Court in the agreement with Valve out of which this action  
4 arises. This Court also has jurisdiction for causes of action arising under Washington law under the  
5 Supplemental Jurisdiction Statute, 28 U.S.C. § 1367, because these state law causes of action form  
6 part of the same case or controversy under Article III of the United States Constitution.

7 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

## 8 II. THE PARTIES

9 4. Valve is a Washington corporation maintaining its principal place of business in  
10 Bellevue, Washington. Valve is one of the world's leading developers of computer software games,  
11 including such titles as "Half-Life," "Counter-Strike," "Blueshift," "Gunman Chronicles," and  
12 "Team Fortress," (hereinafter collectively referred to as "Valve Games"). The Valve Games have  
13 received numerous awards and accolades within the gaming industry, including "Game of the Year"  
14 awards for Valve's Half-Life game by over fifty industry periodicals and online publications.

15 5. Sierra is a Delaware corporation, maintaining its principal place of business at 3060  
16 139'th Ave. SE, #500, Bellevue, WA, 98005. Sierra is a publisher of computer software games and  
17 publishes some of Valve's game titles, including the Valve Games. Sierra is a wholly owned  
18 subsidiary of Vivendi Universal Games, Inc.

19 6. Vivendi Universal Games, Inc. ("Vivendi Games") is a Delaware corporation, with its  
20 principal place of business in Los Angeles, California. Vivendi Games is a subsidiary of Vivendi  
21 Universal, SA.

22 7. Vivendi Universal, S.A. ("Vivendi") is a French corporation. Vivendi Universal is  
23 the parent corporation of Vivendi Games and Sierra.

24 8. When referred to collectively herein, Vivendi and Vivendi Games will be referred to  
25 as "Vivendi Companies." In March of 2002 Valve entered into a Software Publishing Agreement  
26

1 ("Agreement") with Sierra and its "Affiliates." The Agreement provides that its terms bind Sierra  
2 and its Affiliates. The Agreement defines "Affiliates" as "any entity that, directly or indirectly, or  
3 through one or more intermediaries, owns, is owned by, or is under common ownership with, such  
4 specific entity." See Agreement § 1. The Vivendi Companies are all Affiliates of Sierra under the  
5 Agreement and are bound by its terms. All Vivendi Companies have done business in this District  
6 and agreed to jurisdiction and venue in this District for any action arising out of the Agreement.  
7

### 8 III. STATEMENT OF FACTS

9 9. On March 29, 2001, Valve and Sierra and the Vivendi Companies entered into the  
10 Agreement. Under the Agreement Valve granted a limited license to reproduce, use, distribute, and  
11 license certain computer games created by Valve ("Valve Games") in return for royalty payments  
12 and other consideration. Under the Agreement Sierra's license to reproduce, use, distribute, and  
13 license the Valve Games only in retail channels as "Retail Packaged Products."

14 10. All of the Valve Games at issue contain proprietary software code commonly referred  
15 to as the Valve Engine. Valve is the owner of the copyrights in the Valve Engine. (Copyright Reg.  
16 TX 5-445-241, July 24, 2001). Valve also holds valid Copyright Registrations in Valve Games  
17 known as "Half-Life" (Copyright Reg. PA 915-913 January 28, 1999) and "Half-Life Day One"  
18 (Copyright Reg. PA 901-764, October 29, 1998) (Certificates of Recordation Vol. 3470 Pages 546  
19 and 547, June 8, 2001). See Attached Exhibit A.

20 11. Sierra and the Vivendi Companies, directly and through their agents, have reproduced  
21 one or more of the Valve Games and distributed them to internet cafés" and/or "cyber cafés" in the  
22 United States and elsewhere. Cyber cafés are for-profit multi-player facilities that make computers  
23 available for use to the general public upon payment of an hourly fee for such use. Reproducing,  
24 using, distributing, and/or licensing the Valve Games to cyber cafés is not within the scope of license  
25 granted in the Agreement and constitutes copyright infringement.  
26

1           12.     The natural, probable, and foreseeable result of this infringing conduct by Sierra and  
2 the Vivendi Companies has been and will continue to be to deprive Valve of the benefits of  
3 reproducing, using, distributing, and/or licensing the Valve Games and to deprive Valve of  
4 opportunities to expand goodwill associated with the Valve Games. Defendants have also unjustly  
5 profited from such activity.

6           13.     In the alternative, the reproduction, use, distribution, and/or licensing of the Valve  
7 Games to cyber cafés by Sierra and the Vivendi Companies in the United States and abroad was and  
8 is also a breach of the Agreement.

9           14.     As set forth in the Agreement, Sierra and the Vivendi Companies promised that  
10 copies of Retail Packaged Product Valve Games would be distributed only with end-user license  
11 agreements approved in advance by Valve. See Agreement § 4.1.2. Without Valve's prior  
12 knowledge Sierra and the Vivendi Companies and their agents distributed and entered into  
13 multiple-seat license agreements for commercial use of the Valve Games in cyber cafés worldwide.  
14 Valve did not approve any end-user license agreements that would permit Valve Games to be played  
15 in cyber cafés and such distribution is not licensed under the Agreement.

16           15.     As set forth in the Agreement, Sierra and the Vivendi Companies promised that, in  
17 the event they learned of any potential infringement regarding the Valve Games, they would  
18 promptly notify Valve of the same. Sierra and the Vivendi Companies further promised that, if  
19 requested by Valve to do so, they would cooperate in all respects in any action that Valve deemed  
20 advisable for the protection of Valve's rights in and to the Valve Games. See Agreement § 4.4.  
21 Although requested to do so by Valve with respect to activities in the Philippines, Malaysia, and  
22 Germany, Sierra and the Vivendi Companies have refused to cooperate with Valve in enforcing  
23 Valve's rights as required by the Agreement.

24           16.     As set forth in the Agreement, Valve retained the sole authority to negotiate and  
25 execute agreements for sales of Non-Retail Software Products and Traditional OEM Products. See  
26

1 Agreement § 2.8. Sierra and the Vivendi Companies and their agents negotiated and entered into  
2 agreements with distributors worldwide under which defendants purported to grant the right to  
3 distribute Valve Games as Traditional OEM Products. Some of these agreements were for the  
4 known purpose of supplying OEM Valve Games to cyber cafés. Sierra and the Vivendi Companies  
5 were not authorized to grant any such license to the Valve Games.

6 17. As set forth in the Agreement, Sierra and the Vivendi Companies promised that they  
7 would conduct their businesses so as to reflect favorably on the reputation of the other party and not  
8 invade its good will. See Agreement § 9.2. Sierra and the Vivendi Companies also promised that  
9 they would not conduct any business or arrangement directly or indirectly through any Affiliate that  
10 would result in Sierra and the Vivendi Companies avoiding the intent, terms and conditions of the  
11 Agreement. Sierra and the Vivendi Companies failed to honor these provisions of the Agreement.  
12 See Agreement § 9.11.

13 18. Prior to the commencement of this action, Valve demanded that Sierra and the  
14 Vivendi Companies and agents cease and desist from any licensing of the Valve Games to cyber  
15 cafés. Sierra represented to Valve that it was no longer licensing Valve products to cyber cafés  
16 worldwide. This representation was false and in fact Sierra and the Vivendi Companies continued to  
17 license Valve Games to cyber cafés.

18 19. Sierra, the Vivendi Companies and their agents have entered into numerous cyber  
19 café licenses which exceed the scope of the Agreement, breach the Agreement, and caused damage  
20 to Valve. For example, on November 1, 2002, Vivendi Universal Games, Inc. entered into two  
21 agreements with a Philippine corporation known as Asian Media Development Group ("AMDG")  
22 purporting to authorize AMDG to distribute and license Valve's game "Counter-Strike" and separate  
23 Vivendi game titles (Diablo II, Starcraft, Alien v. Predator 2, Empire Earth, and War Craft III) to  
24 cyber cafés in the Philippines.

25 20. As of July 2, 2002, AMDG advertised commercial site licenses for Counter-Strike  
26

1 and the Sierra Games on its website as follows:

2 AMDG offers Commercial Site Licenses for Blizzard & Sierra Games!

3 Network Gaming Centers may now enjoy playing Vivendi Universal Games  
4 legitimately. AMDG now offers a promotional Commercial Site Licenses  
5 STARTER PACK for Blizzard & Sierra award winning games. Included in  
6 this package are the new hit games "Warcraft III: Reign of Chaos" and the  
phenomenal "Half-Life: Counter Strike".

7 Along with these FREE titles "Aliens vs. Predator", "Empire Earth", "Diablo  
8 II" and "StarCraft".

9 21. By means of the agreements with AMDG, Sierra and the Vivendi Companies  
10 attempted to conceal from Valve the purpose and effect of the agreements that it entered into with  
11 AMDG. Although the purpose and effect of the deal underlying the two International Distributor  
12 Agreements was to provide AMDG with products that it could license to cyber cafés for Vivendi, the  
13 International Distributor Agreement for CounterStrike was purposely crafted to avoid the appearance  
14 that Vivendi had done so.

15 22. The natural, probable, and foreseeable result of Sierra's unauthorized distribution of  
16 Valve games and breaches of the Agreement has been and will continue to be to deprive Valve of the  
17 benefits of the Agreement and to deprive Valve of opportunities to expand goodwill associated with  
18 the Valve Games. Sierra and the Vivendi Companies have also unjustly profited from such activity.

# 19 COUNT I

## 20 COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. §501

21 23. Plaintiff realleges paragraphs 1-24 of this Complaint as if fully set forth herein.

22 24. Valve is the owner of the registered copyrights for the Valve Engine, Half-Life, and  
23 Half-Life Day One.

24 25. The Valve Games are built on and incorporate the Valve Engine.

25 26. Sierra and the Vivendi Companies have in the past and continues to reproduce, use,  
26 distribute, and/or license one or more of the Valve Games with regard to "cyber cafés." Sierra's

1 activities are outside the scope of Defendant's limited license to reproduce, use, distribute, and/or  
2 license the Valve Games as Retail Packaged Products, and therefore constitute copyright  
3 infringement in violation of the Copyright Act of 1976, 17 U.S.C. §106.

4 27. This infringing activity has caused continuing harm to Valve, for which there is no  
5 adequate remedy at law, and will also cause monetary damages.

6 **COUNT II**

7 **BREACH OF CONTRACT**

8 28. Plaintiff realleges paragraphs 1-29 of this Complaint as if fully set forth herein, and in  
9 the alternative alleges:

10 29. Valve has performed all its obligations under the Agreement.

11 30. Sierra and the Vivendi Defendant's reproduction, use, distribution, and/or licensing of  
12 one or more of the Valve Games with regard to cyber cafés in the United States and abroad was a  
13 breach of the Agreement.

14 31. Sierra and the Vivendi Defendant's distribution of Valve games for use in cyber cafés  
15 with end-user license agreements that were not approved by Valve was a breach of the Agreement.

16 32. Sierra and the Vivendi Companies breached the Agreement by failing to notify Valve  
17 of infringement or cooperate with Valve in its attempts to stop infringement of its copyright.

18 33. Sierra and the Vivendi Companies breached the Agreement by entering into  
19 agreements with distributors that permitted Valve Games to be installed as Traditional OEM  
20 Product.

21 34. Sierra and the Vivendi Companies breached the Agreement by entering into licensing  
22 agreements with cyber cafés to allow multi-player use of Valve games without the sale of Retail  
23 Packaged Product.

24 35. Sierra and the Vivendi Companies breached the Agreement by failing to use  
25 commercial best efforts to maximize sales of Valve games by undermining the market for Valve  
26



1 games and by failing to charge a reasonable market price for the games.

2 36. Sierra and the Vivendi Companies have breached the implied covenant of good faith  
3 and fair dealing by engaging in a course of conduct intentionally designed to prevent Valve from  
4 obtaining its rights and benefits under the Agreement.

5 37. Sierra and the Vivendi Companies have breached the Agreement by distributing the  
6 Valve Games under license agreements that were not approved by Valve.

7 38. Sierra and the Vivendi Companies breached the Agreement by failing to conduct its  
8 business so as not to injure Valve's reputation and goodwill.

9 39. Sierra and the Vivendi Companies breached the Agreement by conducting business  
10 through Affiliates in an attempt to hide their actions from Valve and thereby avoid or bypass the  
11 intent and terms of the Agreement.

12 40. As a direct and proximate result of Sierra and the Valve Defendant's breach of the  
13 Agreement, Valve has been damaged in an amount to be proven at trial, but in excess of the statutory  
14 minimums.

15  
16 WHEREFORE, Plaintiff respectfully prays that this Court:

17 1. Issue a permanent injunction, enjoining and prohibiting defendants and their agents,  
18 servants employees, officers, attorneys, successors and assigns from reproducing, using, distributing,  
19 and/or licensing the Valve Games with regard to internet cafés, cyber cafés, or any other multi-  
20 player facility;

21 2. Require defendants to account to Valve for all profits and damages resulting from the  
22 activities complained of in this Complaint;

23 3. Order an award of attorneys' fees and costs to Valve as provided by § 505 of the  
24 Copyright Act, or as otherwise provided by the law;

25 4. Award Valve its attorneys fees and costs incurred herein as provided by the parties'  
26



1 Agreement.

2 5. An award of compensatory damages in an amount to be proved at trial, or in the  
3 alternative, for an award of statutory damages; and

4 6. For such other and further relief as this Court deems appropriate.

5 **IV. JURY DEMAND**

6 Plaintiff hereby demands a trial by jury of all issues in this case.

7 DATED this 15th day of September, 2003.

8 PRESTON GATES & ELLIS LLP

9  
10 By 

11 Karl J. Quackenbush, WSBA #9602

12 Jason P. Holtman, WSBA #28233

13 Attorneys for Plaintiff  
14 Valve Corporation  
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